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Before the
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Committee on Appropriations
United States Senate
Fiscal 2013 Budget Request
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Mr. Chairman, Mr. Hoeven, and Members of the Subcommittee:

Thank you for the opportunity to present the fiscal 2013 budget request of the United States Copyright Office. We deeply respect the need to engage in responsible fiscal management in these austere times.

The Copyright Office, already a lean operation, does not seek additional FTEs or funding for new projects, but we do hope to ensure that our existing staff is compensated competitively so as to maintain a strong, talented workforce that will sustain the Copyright Office in the 21st century. As copyright issues become more ubiquitous, and as the Office charts a course for the future, it will need to pursue intelligent growth to ensure that it can meet the needs of the national copyright system well into the future.

For fiscal 2013, the Copyright Office requests a total of \$52.772 million, offset by fee collections of \$28.029 million, and licensing royalty collections of \$5.582 million, applied to the Office's Licensing Division and the Copyright Royalty Judges. Specifically, our requests are as follows:

- 1) A 2.2% increase (\$0.999 million) over FY12 to support mandatory pay-related and price level increases affecting administration of the Office's core business systems and public services;
- 2) A 1.8 % increase (\$0.093 million) over FY12 in offsetting collection authority for the Copyright Licensing Division to support mandatory pay-related and price level increases affecting the administration of the Office's licensing functions; and
- 3) \$2 million to restore the Copyright Office's base funding.¹

¹ The enacted budget for fiscal 2012 directed the Copyright Office to utilize no-year funding (collected from fees for services) to offset expenses, effectively reducing our spending ratio of appropriated dollars to fees at the same time that fees and receipts were lower than anticipated. To ensure sufficient funding for operations in fiscal 2013, including the ability to cover necessary staffing and critical technology upgrades when fees fluctuate, the Office requests restoration of its base appropriations. As outlined in *Priorities and Special Projects of the United States Copyright Office: 2011-2013* (www.copyright.gov/docs/priorities.pdf), the Office is in the midst of a multi-year evaluation of fees, services, technology and other issues that will inform its future strategies for intelligent growth.

Program Overview

The U.S. Copyright Office plays a critical role in promoting and disseminating American works of authorship and in sustaining large and small businesses in the information, entertainment, and technology sectors. It administers the national copyright registration and recordation systems (and exercises associated regulatory authority) in accordance with Title 17 of the U.S. Code. The Office's registration system and the companion recordation system constitute the world's largest database of copyrighted works and copyright ownership information.

Copyright & The Economy

In terms of the larger U.S. economy, many authors, composers, book and software publishers, film and television producers, and creators of musical works depend on the registration system to protect their creative works and business interests. Based on a study released in 2011 using data from 2010,² these core sectors – whose primary purpose is to produce and distribute creative works – account for more than 6.36% of the U.S. domestic gross product, or nearly \$932 billion. The core copyright industries also employed 5.1 million workers (3.93% of U.S. workers), and that number doubles to over 10.6 million people (8.19% of the U.S. workforce) when the workers that help and support the distribution of these works are added into the equation.

Law & Policy

The Register of Copyrights is the principal advisor to Congress on issues of domestic and international copyright policy. She works closely with both copyright owners and users of copyrighted materials to sustain an effective copyright law—on issues ranging from enforcement to fair use.

Through its policy work, the Copyright Office provides leadership and technical expertise to ensure that the copyright law stays relevant and updated, not only to protect authors in the 21st century, but also to ensure updates for users of copyrighted works. These include appropriate exceptions for libraries, persons who are blind, and certain noncommercial educational activities.

The Copyright Office participates in important U.S. trade negotiations relating to intellectual property (e.g., treaties and free trade agreements) at both the bilateral and multilateral levels. It also works with the Department of Justice on critical copyright cases.

Fiscal 2011

In fiscal 2011, the Office provided ongoing assistance to Congress on a number of complex issues and delivered a major study on market-based alternatives to statutory licenses for cable and satellite retransmission. The Register testified twice on major copyright legislation, on (1) enforcement measures to combat the operators of illegal, infringing websites trafficking in

² Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2011 Report*, prepared by Economists, Inc. for the International Intellectual Property Alliance (2011).

infringing copyrighted works, such as movies, music, books, and software; and (2) new provisions that would update the criminal penalties for infringement of the exclusive right of public performance that occurs through the streaming of the work (e.g., a television program or live sporting event) to make the penalties similar to those for infringement based on the distribution right. The Office participated in major negotiations at the World Intellectual Property Organization and with major trading partners. On the litigation front, the Department of Justice called upon the Office on several important issues, including challenges to the constitutionality of copyright law amendments, interpretation of the first sale doctrine, and issues related to the importation of copyrighted works.

Registration & Recordation

The copyright registration and recordation systems protect, and document for the public, a diverse array of American authorship, including motion pictures, software, books, musical compositions, sound recordings, photography, and fine art, as well as databases, websites, and other online works. The Office reached a significant milestone in fiscal 2011 by returning to normal levels of processing and claim completion and eliminating the backlog. At the start of fiscal 2011, it had approximately 380,000 claims awaiting processing, and received an additional 539,332 claims. The Office closed 734,256 claims during the year—nearly 195,000 more than it received. It ended the year with its standard workload of approximately 185,000 claims on hand, of which approximately half are awaiting further action from the claimants and half are awaiting Office action. Those in the Office's working queue will, on average, be processed within two to four months, depending on the complexity of the claim.

Licensing

The Copyright Office helps administer certain compulsory and statutory license provisions of the U.S. Copyright Act, which pertain to setting royalty rates and terms and determining the distribution of royalties for certain copyright statutory licenses. These licenses cover activities including secondary transmissions of radio and television programs by cable television systems and secondary transmissions of network and non-network stations by satellite carriers. The Office's primary clients with respect to the statutory licenses are copyright owners and users of copyrighted works that are subject to statutory copyright licenses. The Office is responsible for collecting and investing royalty fees for later distribution to copyright owners, examining related documents, providing information to various constituencies as part of its public affairs program, and recording documents for several licenses for which royalties are handled by outside parties.

In fiscal 2011, the Office's Licensing Division collected nearly \$326 million in royalty fees and distributed approximately \$144 million in royalties to copyright owners, according to voluntary agreements among claimants or as a result of determinations of the Copyright Royalty Judges. The Division also began a multiyear business process reengineering program designed to decrease processing times for statements of account, implement on-line filing processes, and improve public access to Office records. The new processes will be implemented and refined throughout fiscal 2012 and 2013.

Acquisitions

The Copyright Office also administers the mandatory legal deposit of works published in the United States. In fiscal 2011, the Office managed the deposit of more than 700,000 copies of creative works for the Library's collection, which the Library would otherwise have had to purchase, valued at approximately \$31 million.

Because more and more journals, magazines, and newspapers are "born digital," the Copyright Office has led a Library-wide effort to obtain and manage serials that publishers supply only in electronic formats. Although the project currently focuses on mandatory deposit provisions under Title 17—provisions that require publishers to deposit copies of certain works with the Library of Congress within three months of publication—it serves as a test bed for the intake of works by the Library through other mechanisms, including the registration system. The Office's current work sets the stage for the Library's electronic acquisition strategy, which will ultimately enhance and diversify the Library's collections to capture and reflect American Internet culture.

Priorities for a 21st Century Copyright Office

Fiscal 2012

On October 21, 2011, the Register of Copyrights released *Priorities and Special Projects of the U.S. Copyright Office* (www.copyright.gov/docs/priorities.pdf), a comprehensive document that articulates the significant statutory duties of the Office as well as expectations of the copyright community. This document received tremendous positive feedback from a wide array of copyright stakeholders and the media. It includes everything from strategic evaluation of technical systems to planning for intelligent business growth for the future to updating the *Compendium of Copyright Office Practices*—the primary source of registration practice followed by Copyright Office staff, the public and courts—for the digital era.

The communication of these priorities and special projects represents a commitment from the Office to address complexities in the copyright system and prepare for future challenges. The Office will use the priorities document as a roadmap to improve the quality and efficiency of its services subject to the availability of budgetary resources. The document outlines the Office's work on current and future law and policy questions including orphan works, small claims solutions for copyright owners, mass book digitization, illegal streaming, collaboration with the World Intellectual Property Organization, and updates to registration practices to accommodate works created online. The Office will also undertake improvements to operations including: technical upgrades to electronic registration, increased public outreach and copyright education, and reengineering of its recordation system.

The following are some of the specific policy projects the Office has completed or commenced in fiscal 2012: (1) an analysis of legal issues relating to mass book digitization, the Google Book Search litigation, and applicable licensing models; (2) a major study and recommendations to Congress regarding copyright protection for pre-1972 sound recordings; (3) research and analysis of small claims solutions for individual authors and other copyright owners; (4) a rulemaking on exceptions to the prohibition on circumvention of measures

controlling access to copyrighted works for ultimate determination by the Librarian of Congress (pursuant to the Digital Millennium Copyright Act); and (5) the development of an updated fee schedule that takes into account the Office's fiscal requirements as well as the objectives of the copyright system.

The Register of Copyrights will serve on the negotiating team for the United States for a major treaty to protect performers in the context of audiovisual works at a Diplomatic Conference to be held in June 2012 in Beijing, and will provide treaty implementation advice to Congress, as appropriate.

Finally, the Office will continue to evaluate, streamline, and otherwise improve its public services, including processing times and quality assurance for the examination of copyrighted works, processing of claimant information, and issuance of copyright registration certificates.

Fiscal 2013 and Beyond

Fiscal 2013 will be an extremely important year for the Copyright Office. The Office will continue its implementation of the Register's priorities and special projects; the research and analysis phase of many of these projects will conclude by or before October 2013. Some of these projects relate directly to the stewardship and effective operation of the Nation's copyright registration system in the 21st century, and will yield important data to inform the Office's focus and strategies for fiscal 2014-2018.

The Office will address the implementation of its fee schedule and associated practices early in fiscal 2013, following research in fiscal 2011 and 2012, and public consultation and delivery of a major study to Congress on the topic in fiscal 2012.

The Office will also conclude a major analysis of the technical aspects of registration and recordation in fiscal 2013, including crafting a strategy to address certain technology, portal and processing issues about which it is studying and consulting with stakeholders and experts in fiscal 2012. It will continue the critical work of ensuring standards for repositories of electronic works of authorship, and digitizing historic copyright records from the period of 1870 to 1977 and making them searchable online.

The Office will continue its work on major negotiations for intellectual property protection in the Asia-Pacific rim and other regions of the world, and continue major work on the implementation of worldwide protection for performers in audiovisual works. It will work with Congress on a number of major studies and policy developments, including orphan works, revisions of certain exceptions to copyright (including for libraries), mass digitization policy, and final work on small claims solutions for copyright owners (with a major study due to Congress in October 2013). The Office will publish portions of a major revision of its lengthy *Compendium of Copyright Office Practices* during fiscal 2013, and release the final publication in October 2013.

Challenges of the Current Fiscal Environment

The Office is navigating an increasingly challenging budget environment. Since fiscal 2010, it has absorbed a 22.7% reduction in its appropriation, partially offset by using \$2 million in carryover funds resulting in an effective cut of 13.1%. The overall effect was a 7% reduction in total budget authority which takes into account offsetting collections. In fiscal 2012, a reduced appropriation, as well as collections that were lower than expected, required the Copyright Office to make significant cutbacks. The Office substantially reduced its information technology budget, slowing critical upgrades to the Office's electronic registration service that directly supports copyright commerce and affects both authors and users of copyrighted materials. The Office also reduced its workforce by 44 staff members through Voluntary Early Retirement Authority and Voluntary Separation Incentive Payments programs.

Although the Office is currently understaffed, it has taken steps to delay or reduce new hiring and to reduce training, travel, supplies, and new equipment expenditures. The Office is concerned that continued funding challenges could have an adverse impact on the Office's registration program, potentially leading to another backlog of copyright claims awaiting processing. It successfully eliminated a backlog in fiscal 2011 that had occurred as a result of its transition to electronic processing in 2007. Further reductions will also lead to an adverse impact on its ability to participate in international negotiations and other policy efforts that are important to U.S. trade interests. The Copyright Office is committed to intelligent growth, recognizing the need to develop and implement a clear business strategy that takes into account the needs of the national copyright system, while exercising sound fiscal judgment.

Fees for Services

On October 1, 2011 the Office commenced a study of the costs it incurs and the fees it charges with respect to the registration of claims, recordation of documents, and other public services, pursuant to its authority under 17 U.S.C. § 708(b). The statute requires that the Office establish fees that are "fair and equitable and give due consideration to the objectives of the copyright system." 17 U.S.C. § 708(b)(4). Such objectives include, for example, protecting creative works of authorship, ensuring a robust public database of authorship and licensing information, and facilitating the recovery of reasonable costs incurred by the Office.

As noted previously, the Office will deliver the fee study to Congress in fiscal 2012, with implementation as appropriate in fiscal 2013.

Conclusion

Mr. Chairman, I want to thank you for your consideration of our budget request today and for the committee's past support of the U.S. Copyright Office. Thank you in particular for considering the funding we require to sustain a first-rate staff and meet necessary expenses, enabling us to perform our core duties under the law and build the infrastructure necessary to support America's copyright system in the years ahead.